IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.2210 of 2006

Shri Ajay Pralhad Gaykwad Petitioner
Vs.
Shri Devendra Kumar Neelakanth & ors. Respondents

Mr.S.V.Palsuledesai for petitioner.

CORAM: B.H.MARLAPALLE,J.

June 28, 2006.

P.C.

. In Special Darkhast No.46 of 2003 an application came to be filed on behalf of J.D. No.3 praying for setting aside the decree under execution on the ground that it was obtained by fraud, misrepresentation and on the basis of bogus documents. This application at Exhibit 15 has been rejected by the impugned order dated 6/3/2006 by the learned Jt. Civil Judge, Senior Division at Kalyan.

. In Special Civil Suit No.86 of 1999, Defendant No.3 was Women's beauty parlour and Written Statement was filed on its behalf and it was represented by Advocate Shri B.J.Mishra who also appeared for Defendant No.4. The decree passed in Special Civil Suit No.86 of 1999 after hearing all the parties concerned is a subject matter of challenge in First

Appeal No.1577 of 2003 pending before this Court. In view of these obtaining circumstances it was not permissible for an applicant claiming himself to be a mentally retarded person to file an application in the execution proceedings and take a plea that the decree was obtained by fraud. In fact in the application at Exhibit 15 there was nothing to point out as to how the applicant was connected with the defendant no.3, which was a women's beauty parlour and in any case the defendant no.3 has the opportunity to take all such pleas in the First Appeal.

. Hence no interference is called for in the impugned order and the petition is rejected summarily.

(B.H.MARLAPALLE,J.)